

REMARKS

Claims 313-318 are canceled. Claims 21-28, 31-35, 37-52, 55-63, 90-93, 99-101, 103-108, 120, 136-144, 146, 147, 150, 151, 153-179, 183-216, 218, 243-250, 322, 325, 328-342, 357-359, and 386-388 are withdrawn. Claims 1, 15-28, 31-35, 37-52, 55-63, 65-67, 69-75, 79-108, 110-256, 272, 309, 319-362, 365-373, and 376-392 are currently pending in the case. Further examination and reconsideration of the presently claimed application are respectfully requested.

Section 121 Restriction

In response to the Examiner's restriction requirement under 35 U.S.C. § 121, Applicant provisionally elects without traverse:

- Group I drawn to a paint comprising an esterase of EC 3.1.8;
- Subgroup A drawn to EC 3.1.8.1 – arylalkylphosphatase/organophosphorus hydrolase; and
- The following combination of subspecies:
 - A *Flavobacterium* sp *opd* gene product
 - Co²⁺ ion
 - Film formation at -10°C – 40°C/ambient conditions
 - Liquid/solvent component of water
 - Without any inorganic compounds
 - Without any organic components
 - A thermoplastic binder
 - A combination of a filler and a preservative
 - the preservative being a bactericide
 - No plasticizer

In view of the provisional election, non-elected Group II-VII claims 313-318 are canceled, and non-elected Group VIII claims 103-108, 357-359, and 386-388 are withdrawn. In addition, claims 21-28, 31-35, 37-52, 55-63, 90-93, 99-101, 120, 136-144, 146, 147, 150, 151, 153-179, 183-216, 218, 243-250, 322, 325, and 328-342 which are directed to non-elected subject

matter are withdrawn. Claims 1, 15-20, 65-67, 69-75, 79-89, 94-98, 102, 110-119, 121-135, 145, 148, 149, 152, 180-182, 217, 219-242, 251-256, 309, 323, 324, 326, 327, and 343-356 read on one or more of the elected species. None of such claims read on the entire combination of elected species and, thus, some of such claims (e.g., independent claim 1) may be considered linking claims or generic claims to at least some of the elected species. As noted on page 10 of the Office Action, claims 272, 319-321, 360-362, 365-373, 376-385, and 389-392 link Groups I-VIII of the restriction requirement, and are considered linking or generic claims as well. Applicant respectfully requests that, upon allowance of a generic claim (e.g., claim 1), claims directed at non-elected species (e.g., withdrawn claims 21-28, 31-35, 37-52, 55-63, 90-93, 99-101, 103-108, 120, 136-144, 146, 147, 150, 151, 153-179, 183-216, 218, 243-250, 322, 325, 328-342, and 357-359) be allowed under 37 C.F.R. § 1.141(a). Applicant further reserves the right to file a divisional application at a later date capturing non-elected subject matter.

It is noted that the aforementioned provisional election is based on assumptions made by the Applicant in view of what is presumed to be inadvertent errors in the Office Action. In particular, page 5 of the Office Action making specific reference to claim 216 requires election of one of:

- Without any inorganic components
- With inorganic components other than those of Claim 216
- One of the inorganic components of Claim 216 or one specific combination thereof.

Claim 216 recites inorganic compounds, not components; thus, it is presumed that the required election is to one of:

- Without any inorganic compounds
- With inorganic compounds other than those of Claim 216
- One of the inorganic compounds of Claim 216 or one specific combination thereof.

Furthermore, it is noted that a further restriction on page 5 of the Office Action is missing reference to specific claims. In particular, page 5 of the Office Action requires election of one of:

- Without a binder
- With binder(s) other than those recited in Claims [missing]
- One specific binder recited in Claims 133, 134, 136, 139, 141-144, 146, 147, 150, 151, 153, 155, 157, 159, 161, 165, 167, 169, 171, 174, 176, and 178.

In making the provisional election of a such subject matter, the Applicant presumes the restriction to read as:

Without a binder

With binder(s) other than those recited in Claims 133, 134, 136, 139, 141-144, 146, 147, 150, 151, 153, 155, 157, 159, 161, 165, 167, 169, 171, 174, 176, and 178

One specific binder recited in Claims 133, 134, 136, 139, 141-144, 146, 147, 150, 151, 153, 155, 157, 159, 161, 165, 167, 169, 171, 174, 176, and 178.

If either of the aforementioned assumptions is incorrect, notification by the Examiner to the supposed errors in the assumptions is requested. In addition, an opportunity to change the election of subject matter to which the Applicant requests examination is requested on the basis that the restriction was misconstrued.

Statements Made with Respect to Election of Subject Matter for the Original Restriction Mailed June 20, 2005

Page 2 of the Office Action states “It is noted that, as stated in the action of January 12, 2006, the elected invention was originally directed to an aqueous paint comprising an enzyme not listed in groups (G)-(QQQ) of the original restriction mailed June 20, 2005 ...” Such a statement is respectfully traversed. In particular, the response to the restriction requirement mailed June 20, 2005 merely elected the Examiner’s self categorized grouping of “enzyme” (i.e., Group A). There was no grouping of “an enzyme not listed in groups G-QQQ”. The fact that specific types of enzymes were listed as alternative subject matter to elect (i.e., Groups G-QQQ) does not render the election of Group A “enzyme” as an enzyme not listed in those groups, particularly since those specific types of enzymes were categorized at the same level as the subject matter of “enzyme” (i.e., they were not restricted in subcategories of Group A). Thus, the election of “enzyme” in the response mailed January 12, 2006 (along with the other elections of paint, water, and ambient conditions) merely specifies the subject matter elected for examination at that time was an aqueous paint comprising an enzyme, wherein the paint forms a film at ambient conditions.

CONCLUSION

This response constitutes a complete response to the issues raised in the Office Action mailed October 31, 2008. In view of the amendments and remarks herein, Applicants assert that pending claims 1, 15-28, 31-35, 37-52, 55-63, 65-67, 69-75, 79-108, 110-256, 272, 309, 319-362, 365-373, and 376-392 are in condition for allowance. If the Examiner has any questions, comments, or suggestions, the undersigned earnestly requests a telephone conference.

The Commissioner is authorized to charge any fees which may be required, or credit any overpayment, to deposit account no. 50-1085.

Respectfully submitted,

/C. Steven McDaniel/

C. Steven McDaniel

Reg. No. 33,962

Attorney for Applicant

Customer No. 62754

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